

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Joseph Famiglietti,

Court No.: _____

Plaintiff,

NOTICE OF REMOVAL

v.

Olympus America Inc.,

Defendant.

To: Plaintiff Joseph Famiglietti, through his counsel Christopher D. Jozwiak, Cassie C. Navarro, Baillon Thome Jozwiak & Wanta LLP, 100 South Fifth Street, Suite 120, Minneapolis, MN 55402

Defendant Olympus America Inc. (Defendant), through its counsel and pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446, submits this Notice of Removal of an action from the District Court for the Fourth Judicial District for the State of Minnesota, Hennepin County. As grounds for this Notice of Removal, Defendant states as follows:

1. On April 10, 2019, Plaintiff Joseph Famiglietti caused copies of a Summons and Complaint (Complaint) in the District Court for the Fourth Judicial District for the State of Minnesota, Hennepin County (State Court), captioned *Joseph Famiglietti v. Olympus America Inc.*, (a true and correct copy of the Summons and Complaint is attached as Exhibit A) to be served on Defendant.

2. On information and belief, Plaintiff has not yet filed the Complaint in State Court, and therefore, there is no state court file number.

3. The first date of Defendant's notice of the Complaint for purposes of removal was April 11, 2019.

4. The Complaint contains causes of action for alleged violations of the Family and Medical Leave Act, the Minnesota Human Rights Act, and the Minnesota Whistleblower Act.

5. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, in that it arises under the laws of the United States. Specifically, in his Complaint, Plaintiff alleges a claim arising under the Family and Medical Leave Act (29 U.S.C. § 2601, *et seq.*).

6. This Court has supplemental jurisdiction over all other claims pursuant to 28 U.S.C. § 367.

7. The above-captioned action is also one which this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because it is an action between citizens of different states and the amount that Plaintiff claims is in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

8. Plaintiff is an individual and a citizen and resident of the State of Minnesota.

9. Defendant is a corporation incorporated in the state of New York with its principal place of business in the State of Pennsylvania.

10. Although Defendant denies that it is liable to Plaintiff for any damages, based on the allegations asserted in the Complaint, Plaintiff claims he has suffered damages in excess of \$75,000, exclusive of interest and costs. *See OnePoint Solutions, LLC v. Borchert*, 486 F.3d 342, 349 (8th Cir. 2007) (stating that “[t]he district court has subject matter jurisdiction in a diversity case when a fact finder could legally conclude,

from the pleadings and proof adduced to the court before trial, that the damages that the plaintiff suffered are greater than \$75,000”) (quoting *Kopp v. Kopp*, 280 F.3d 883, 885 (8th Cir. 2002)).

11. Removal to this Court is proper under the provisions of 28 U.S.C. §§ 1441 and 1446.

12. This Notice of Removal is being filed within thirty (30) days of receipt of the Complaint, and therefore, this matter is removable because the time for filing this Notice of Removal under 28 U.S.C. § 1446 has not expired.

13. Other than Defendant’s receipt of the Summons and Complaint, Defendant is not aware that any other pleadings have been served or filed in this matter.

14. Pursuant to 28 U.S.C. § 1446(d), written notice of the removal of this case (attached hereto as Exhibit B), together with a copy of this Notice of Removal with Exhibit A, shall be concurrently served on Plaintiff and filed in State Court.

WHEREFORE, Defendant prays that this action be removed from the District Court for the Fourth Judicial District for the State of Minnesota, Hennepin County, to the United States District Court for the District of Minnesota, and requests that this Court assume full jurisdiction over the case herein as provided by law.

Dated: May 1, 2019

s/Erik E. Rootes

Bradley J. Lindeman (#0298116)

Erik E. Rootes (#0397664)

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